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No.

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1981

WESTERN CONFERENCE OF TEAMSTERS
PENSION TRUST FUND,
*Petitioner,*

VS.

FRANK MUSIC,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI
## to the United States Court of Appeals
## for the Ninth Circuit

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## QUESTIONS PRESENTED FOR REVIEW

1. Is the court of appeals' determination that § 302(c)(5) of the Labor Management Relations Act grants jurisdiction to Federal courts to review the reasonableness of pension plan eligibility rules correct in view of this Court's determination in *United Mine Workers, etc.* v. *Robinson* (U.S.S.Ct. March 8, 1982) ..... U.S. ....., 50 U.S.Law Week 4288, that § 302(c)(5)'s "language hardly embodies this reasonableness requirement"?

2. Where a pension plan's eligibility rule is identical to the rule which Congress has established for eligibility for Social Security disability benefits may a court ignore Congress' judgment and hold that the rule is unreasonable as a matter of law?*

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*The parties to the proceeding in the Ninth Circuit are named in the title of this petition.

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## PETITION FOR A WRIT OF CERTIORARI
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### OPINIONS BELOW

The opinion of the court of appeals is published in 660 F.2d 400. That opinion as amended is printed in Appendix A. The order denying rehearing en banc and amending the opinion is printed in Appendix B.

### JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was filed and entered on October 26, 1981, and its order denying rehearing was filed and entered on April 16, 1982. This Court has jurisdiction pursuant to § 1254(1) of Title 28 of the United States Code.

## STATUTORY PROVISION INVOLVED

This case involves § 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended (29 U.S.C. § 186), the pertinent provisions of which are set forth in Appendix C.

## STATEMENT OF THE CASE

Respondent was covered by the Western Conference of Teamsters Pension Plan, which at all times required as a condition for eligibility for disability benefits that the applicant "is receiving Disability Insurance Benefits under the Federal Social Security Act." The Federal disability insurance program requires a waiting period of five full consecutive calendar months between the date an applicant is injured and the applicant's "date of entitlement" upon which he is eligible to receive benefits.

Respondent suffered a heart attack and stopped working on November 6, 1975. In late August 1976, respondent received a "Social Security Award Certificate" that fixed his date of entitlement for disability insurance benefits at May 1, 1976—five months after his date of injury. On August 25, 1976, respondent applied for a disability benefit under the Plan. The Western Conference of Teamsters Pension Trust Fund determined that respondent first met the requirements for a disability retirement benefit, i.e., "is receiving Disability Insurance Benefits under the Federal Social Security Act," on May 1, 1976, and, therefore, the amount of his benefit was to be calculated under the Plan as in effect on that date.

Prior to January 1, 1976, the amount of a disability benefit was equal to an age 65 retirement pension. In July

1975, the trustees lowered the amount of disability benefits effective January 1, 1976, and made those benefits applicable to all persons who first became eligible for them on and after January 1, 1976. The effect of the change was to reduce the level of disability benefits to equal early retirement benefits subject to a floor of 55 per cent of full age 65 retirement benefits.

Respondent filed a complaint in the United States district court alleging that the trustees of the Trust, in refusing to award the larger benefits under the 1975 version of the Plan solely because he did not begin receiving the Disability Insurance Benefits from the Social Security Administration until May 1, 1976, violated their duties under § 302(c) of the Labor Management Relations Act of 1947.[1]

The parties entered into a stipulation agreeing to certain facts and filed cross-motions for summary judgment.

The trial court granted petitioner's motion for summary judgment and an appeal was taken. The Court of Appeals reversed, holding (1) that the district court had jurisdiction on the ground that a "structural defect" in violation of § 302 exists when an eligibility requirement is viewed by it as arbitrary, capricious and unreasonable and (2) that the Trust Fund had demonstrated no reasonable justification for the requirement that an employee must become eligible for Federal social security benefits in order to become eligible for disability pension benefits under the Plan, i.e., for the five-month waiting period (Appx. A).

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[1]Respondent also alleged violations of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.) which were not reached by the court below (Appx. A, p. A-12).

## REASONS FOR GRANTING CERTIORARI

The case presents an important question of Federal jurisdiction involving an interpretation of § 302 of the Labor Management Relations Act[1] that has been adopted by numerous courts of appeals, but which this Court expressly repudiated in *United Mine Workers, etc.* v. *Robinson* (U.S.S.Ct. March 8, 1982) ..... U.S. ....., 50 U.S.Law Week 4288. This Court should grant certiorari and make clear that § 302 does not give Federal courts jurisdiction to review eligibility requirements established by trustees solely on the ground that "unreasonable" requirements constitute "structural defects" under § 302.

At the very least, the Court should vacate and remand this case to the court below for reconsideration in view of this Court's decision in *United Mine Workers*.

### I. THE DECISION BELOW EXPANDS FEDERAL JURISDICTION UNDER § 302(c)(5) IN DIRECT CONTRADICTION OF THIS COURT'S MANDATE.

In *United Mine Workers, etc.* v. *Robinson* (U.S.S.Ct. March 8, 1982) ..... U.S. ....., 50 U.S.Law Week 4288, this Court held that § 302(c)(5) of LMRA does not authorize Federal courts to review for reasonableness the eligibility rules established by a collective bargaining agreement. The bases for the decision, as articulated by the Court, were the following:

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[1]Section 302(e) provides, in relevant part:

"The district courts of the United States * * * shall have jurisdiction, for cause shown, * * * to restrain violations of this section [§ 302]" (Appx. C, p. A-17).

This is the sole basis for the exercise of jurisdiction by the courts below (Appx. A, pp. A-5 to A-6; see *Alvarez* v. *Erickson* (9 Cir. 1975) 514 F.2d 156, 164).

> *"The statutory language hardly embodies this reasonableness requirement.* Its plain meaning is simply that employer contributions to employee benefit trust funds must accrue to the benefit of employees and their families and dependents, to the exclusion of all others. Indeed, this has been this Court's consistent interpretation of § 302(c)(5)" (50 U.S.Law Week 4290; emphasis added);

and

> "All the conditions in the section fortify the basic requirement that employer contributions be administered for the sole and exclusive benefit of employees. *None of the conditions places any restriction on the allocation of the funds among the persons protected by § 302(c)(5)*" (50 U.S.Law Week 4290; emphasis added).

In the case at bar, the court of appeals held the district court had Federal jurisdiction under § 302(c)(5) to review the *allocation of the fund among the persons protected by § 302(c)(5)*. That holding is simply wrong in view of this Court's decision in *United Mine Workers*.

It makes no difference that the eligibility rules in this case were established by the Trustees rather than directly by the collective bargaining agreement. If § 302(c)(5) contains no "reasonableness requirement" and places no "restriction on the allocation of the funds among the persons protected by § 302(c)(5)," then *a fortiori* the Federal courts have no power *under that section* to pass upon the reasonableness of eligibility rules that allocate benefits among participants, regardless of whether the rules were established directly by the collective bargaining agreement

or by the trustees carrying out the terms of the collective bargaining agreement.

And it is likewise clear that the court below determined that the district court had jurisdiction *only* because it interpreted § 302(c)(5) as containing a reasonableness requirement:

> "Thus, under § 302(c)(5), a pension trust fund must be operated 'for the sole and exclusive benefit of the employees.' *Sailer v. Retirement Fund Trust*, 599 F.2d 913, 914 (9th Cir. 1979). Nevertheless, courts generally recognize that the trustees must have broad discretion in fashioning eligibility requirements for pensions, and that judicial intervention is appropriate only where the trustees' actions in fashioning or applying those eligibility requirements do not have a reasonable basis or are arbitrary and capricious. *See Ponce v. Construction Laborers Pension Trust*, 628 F.2d 537, 541-42 (9th Cir. 1980); *Sailer v. Retirement Fund Trust*, 599 F.2d at 914. On the other hand, if an employee is 'arbitrarily and capriciously' denied a pension, either because the eligibility requirements themselves are unreasonable or because reasonable eligibility requirements are applied in an unreasonable manner, a 'structural defect' exists in the pension plan, in violation of § 302" (Appx. A, pp. A-5 to A-6).

The basic error of the court below and numerous other courts' is the engrafting onto § 302(c)(5) of a purpose it

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'The importance of the issue involved here is emphasized by the number of appellate courts that have erroneously relied on the "structural defect" theory to give jurisdiction to review trustees' actions for reasonableness. See, e.g., *Stacey* v. *Combs* (*D.C.Cir.* 1982) 671 F.2d 602, 604; *Valle* v. *Joint Plumbing Industry Bd.* (2 Cir. 1980) 623 F.2d 198, 201, n. 8; *Knauss* v. *Gorman* (3 Cir. 1978)

was never intended to have. As this Court made clear in *United Mine Workers*, the requirements imposed by § 302 (c)(5) were intended to serve one purpose only:

> "The section was meant to protect employees from the risk that funds contributed by their employers for the benefit of the employees and their families might be diverted to other union purposes or even to the private benefit of faithless union leaders. Proponents of this section were concerned that pension funds administered entirely by union leadership might serve as 'war chests' to support union programs or political factions, or might become vehicles through which 'racketeers' accepted bribes or extorted money from employers.
>
> "Our interpretation of the purpose of the 'sole and exclusive benefit' requirement is reinforced by the other requirements of § 302(c)(5). Section 302(c)(5) is an exception in a criminal statute that broadly prohibits employers from making direct or indirect payments to unions or union officials. Each of the specific conditions that must be satisfied to exempt employer contributions to pension funds from the criminal

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583 F.2d 82, 85-86; *Seafarers Pension Plan* v. *Sturgis* (4 Cir. 1980) 630 F.2d 218, 221-223; *Local Union No. 5, Etc.* v. *Mahoning & Trumbull, Etc.* (6 Cir. 1976) 541 F.2d 636, 638-639; *Johnson* v. *Botica* (7 Cir. 1976) 537 F.2d 930, 933-934; *Phillips* v. *Kennedy* (8 Cir. 1976) 542 F.2d 52, 54; *Ponce* v. *Const. Laborers Pension Trust* (9 Cir. 1980) 628 F.2d 537, 541-542; *Mestas* v. *Huge* (10 Cir. 1978) 585 F.2d 450, 453.

A further ground for review by the Court is provided by the fact that the above-cited cases conflict with the decisions in the First Circuit which hold that § 302 does not give Federal courts jurisdiction to review trustees' actions for violations of fiduciary obligations or standards of prudence in the administration of trust funds (*Bowers* v. *Ulpiano Cassi, Inc.* (1 Cir. 1968) 393 F.2d 421, 424-426; *Bowers* v. *Moreno* (1 Cir. 1975) 520 F.2d 843, 845-846).

> sanction is consistent with the nondiversion purpose. * * * All the conditions in the section fortify the basic requirement that employer contributions be administered for the sole and exclusive benefit of employees. None of the conditions places any restriction on the allocation of the funds among the persons protected by § 302(c)(5)" (50 U.S.Law Week 4290).

Therefore, an eligibility rule which does not divert funds does not constitute a "structural defect" within the context of § 302(c)(5) and may not be reviewed under that section regardless of its reasonableness or unreasonableness.

For this reason, the Court's footnote in *United Mine Workers* that:

> "In *NLRB* v. *Amax Coal Co.*, ___ U.S. ___, ___, the Court held that in enacting § 302(c)(5) 'Congress intended to impose on trustees traditional fiduciary duties.' The Court did not decide, nor do we decide today, whether federal courts sitting as courts of equity are authorized to enforce those duties" (50 U.S.Law Week 4291)

does not at all suggest a reason for refusing to grant a writ of certiorari. The decision below was not based on some alleged violation of traditional fiduciary duties, but on the ground that the "sole and exclusive benefit" requirement allows review for reasonableness. In fact, in *Alvares* v. *Erickson* (9 Cir. 1975) 514 F.2d 156, the case in which the court below first adopted the "structural defect" theory as a basis for Federal jurisdiction to review eligibility rules for reasonableness, the court stated its erroneous reasoning as follows:

"We do believe, however, that a trust fund which authorizes the trustees to act arbitrarily and capriciously to exclude from eligibility certain potential employee-beneficiaries, has a structural defect in that it fails to satisfy the requirement that the fund shall be for the sole and exclusive benefit of all the employees. A Section 302 trust fund does not fit the categories of an ordinary trust and to that extent is *sui generis* and thus requires compliance with the objectives of Section 302. Roark v. Lewis [1968, 130 U.S. App. D.C. 360], 401 F.2d [425] at 427. *In assuming jurisdiction for the enforcement of such a trust in accordance with Section 302, we do not do so under any broad chancery powers of the Court (cf., e. g.,* Copra v. Suro, 236 F.2d 107 (1st Cir., 1956)), or under the theory that Section 302(e) is 'the foundation stone for federal court management of trust funds.' See Bowers v. Ulpiano Casal, Inc., 393 F.2d at 426. Rather, we believe that jurisdiction in a case of this kind can be found within the 'penumbra of express statutory mandate' of Section 302" (514 F.2d 166; emphasis added).

This is directly contrary to this Court's decision in *United Mine Workers.*

**II. THE HOLDING OF THE COURT OF APPEALS, THAT A PENSION TRUST FUND HAS ACTED UNREASONABLY BY ADOPTING AN ELIGIBILITY RULE IDENTICAL TO THAT ESTABLISHED BY CONGRESS FOR SOCIAL SECURITY DISABILITY BENEFITS, CONFLICTS WITH ESTABLISHED PRINCIPLES APPLICABLE TO BENEFIT PLANS.**

In any event, the opinion erroneously holds that eligibility and "vesting" must occur on the date of injury and that any other result would be arbitrary and unreasonable (Appx. A, pp. A-6 to A-12).

The court of appeals acknowledges that Social Security requires a five-month "waiting period" before the applicant can receive disability benefits, that an applicant is not "eligible" until this date of entitlement (Appx. A, p. A-2), and that the legislative history reflects reasons for this eligibility format, i.e., it assists in sorting permanent disabilities out from those that are only temporary (Appx. A, p. A-9). Nevertheless, the court of appeals held that the Trust Fund's format, which is precisely the same as the Federal Government's, is without rational justification.

The court of appeals was duty-bound to presume that the acts of Congress are rational and nonarbitrary (*Usery* v. *Turner Elkhorn Mining Co.* (1976) 428 U.S. 1, 15). Astonishingly, the court below holds that the trustees may not reach the same conclusion that Congress reached and that Congress imposed on all citizens as a matter of law. We are left in the curious position of a Federal format that is still presumptively rational, while the Trust Fund's identical format is held to be irrational.

When a pension plan adopts the scheme of Congress, and that scheme is presumptively rational in the absence of a successful constitutional challenge, a court must find the pension plan's format rational as a matter of law. Any other result would be a subversion of the judiciary's prohibition from second-guessing the wisdom of Congress (see *New Orleans* v. *Dukes* (1976) 427 U.S. 297, 303; *Kleppe* v. *New Mexico* (1976) 426 U.S. 529, 541, n. 10).

The error of the court of appeals' decision is further demonstrated by the fact that it exalts form over substance. When the trustees passed the disability reduction

rule on July 17, 1975, they could have made it effective immediately and applied it to all persons who first became ill or injured on July 18 or later. This would have been lawful under the opinion. Instead, the trustees delayed the effective date of the rule for five months, to January 1, 1976, and keyed it (as they always had) to the Social Security disability effective date, which similarly involves a five-month delay from the injury date. The effect of this action was precisely the same: i.e., to reduce benefits for persons becoming injured after July 17. This, the opinion holds, is unlawful, directly negating the lawful intent of the trustees, which was to make the rule effective as to persons becoming injured after it was passed. The result of the court of appeals' decision is to turn sound pension administration into a lawyer's game.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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## Appendix A

Frank Music,
Plaintiff-Appellant,

v.

Western Conference of Teamsters
Pension Trust Fund,
Defendant-Appellee.

No. 79-4251.

United States Court of Appeals,
Ninth Circuit.

(as amended April 16, 1982)

Appeal from the United States District Court for the Northern District of California.

Before Skopil, Alarcon and Boochever, Circuit Judges.

ALARCON, Circuit Judge:

Appellant Frank Music appeals from a grant of summary judgment in favor of the Western Conference of Teamsters Pension Trust Fund and the denial of his cross-motion for summary judgment. For the reasons stated below, we reverse the judgment of the district court.

FACTS

Frank Music (hereinafter "Music") was a participant in the Western Conference of Teamsters Pension Trust Fund (hereinafter "Trust Fund") for approximately 20 years before he suffered a disabling heart attack on November 6, 1975, at age 47.

Music thereafter applied for federal social security disability benefits (hereinafter "federal disability"). In August of 1976, the Social Security Administration declared Music permanently disabled and therefore eligible to receive those benefits. The federal disability insurance program requires a "waiting period" of five full, consecutive calendar months between the date an applicant first becomes disabled and the applicant's "date of entitlement", upon which he or she is eligible to receive benefits. 42 U.S.C. § 423(c)(2). Music was therefore declared eligible to receive federal disability benefits as of May 1, 1976, which was five full consecutive calendar months after his November heart attack. His federal disability benefits were paid retroactive to that date.

In August of 1976, Music submitted an application to the Trust Fund for disability retirement benefits [hereinafter "union disability pension."]. The Trust Fund determined that Music was eligible to receive a disability pension,[1] and went about computing the amount of his monthly benefit payments.

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[1]The Pension Plan of the Western Conference of Teamsters in effect on the date Music became disabled provided in relevant part:

ARTICLE VII—DISABILITY
RETIREMENT BENEFITS

Section 1—Conditions:

An Employee shall be eligible for a Disability Retirement Benefit, subject to the limitations of Section 6, if

(a) he has not reached his 65th birthday, or retired under Article III,

(b) he has had at least 15 years of Unbroken Service,

(c) he has been covered under the Plan for at least 2 years,

Both at the time of Music's application for benefits and at the time of his disabling heart attack, the Pension Plan of the Western Conference of Teamsters [hereinafter "pension plan"] required that a disabled employee be receiving *federal* disability benefits before she or he was eligible to receive a *union* disability pension.[2] Music was therefore not eligible to receive a union disability pension until May 1, 1976, the date on which he became eligible for federal disability benefits. The Trust Fund fixed the amount of his monthly disability benefits by the terms of the pension plan in force on May 1, 1976 (hereinafter "the 1976 plan"). The plan had gone into effect on January 1, 1976.

Music, however, contended that his pension eligibility should commence on the date he became disabled, in November of 1975, and that the amount of his monthly dis-

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(d) he is disabled and is receiving Disability Insurance Benefits under the Federal Social Security Act, and

(e) Employer Contributions have been made on his account for a total of at least 3,000 Covered Hours in the 16 calendar quarters immediately preceding the calendar quarter during which he first satisfies all of conditions (a), (b), (c), and (d) above.

At the time of his disabling heart attack, Music had satisfied all of the eligibility requirements for a disability retirement benefit other than the one requiring that he be receiving federal disability benefits.

[2]The Trust Fund, in its brief, has stated that this requirement actually means only that an applicant must be *eligible* to receive federal disability benefits, rather than actually be *receiving* them. *See generally Fase v. Seafarers Welfare & Pension Plan*, 432 F.Supp. 1037 (E.D.N.Y. 1977), *aff'd*, 589 F.2d 112 (2d Cir. 1978). We assume that by this concession the Trust Fund has modified this requirement of the pension plan.

ability benefits should be computed under the more generous terms of the pension plan in effect at that time (hereinafter "the 1975 plan").[3] The effect of the pension plan's five-month "waiting period" eligibility requirement, and thus the question of which benefits Music is entitled to, are the sole issues in this case.[4]

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[3]Under the terms of the 1975 plan, a plan participant qualifying for a disability pension was entitled to monthly disability payments "equal to that . . . which the employee would have received . . . if the employee had retired at age 65." [Stipulation as to Agreed Upon Statement of Facts 4]. Under this formula, Music would have been entitled to disability retirement benefits of $533.50 per month. On July 17, 1975, however, the trustees of the Trust Fund voted to actuarily reduce the disability retirement benefits. The amendment effectuating this reduction was approved by the trustees in its final form on October 16, 1975, and its effective date was January 1, 1976. Under the modification adopted by the trustees, disability retirement benefits were made equivalent to "early retirement" benefit payments for disabled participants who are over age 55 on the effective date of their disability retirement benefits. Participants like Music who were under age 55 on the effective date of their disability retirement benefits receive 55 percent of their normal age 65 retirement benefit. Under this plan, Music's full retirement benefit of $533.50 was actuarily reduced to $317.50.

It should be noted here that Music does not allege that he had inadequate notice of the trustees' action lowering benefit amounts, nor does he claim that the trustees' decision to reduce the amounts of disability benefits was arbitrary or unreasonable.

[4]Neither the 1975 plan nor the 1976 plan specifically requires that an applicant wait five months for a union disability pension. The five-month waiting period is a specific eligibility requirement only for federal disability benefits. Nevertheless, because an applicant must qualify for federal disability benefits in order to qualify for a union disability pension, the five-month waiting period is *de facto* an eligibility requirement for a union disability pension, and will be treated as such in this opinion.

## DISCUSSION

### Jurisdiction and Standard of Review

Section 302 of the Taft-Hartley Act [29 U.S.C. § 186] contains a general prohibition against employers making payments of money "or other things of value" to union representatives. Section 302(c)(5), however, sets forth an exception to this general prohibition for payments made to an employee welfare or pension fund. Under § 302(c)(5), the general prohibition of § 302 does not apply "with respect to money or other things of value paid to a trust fund established . . . *for the sole and exclusive benefit of the employees of such employer*, and their families and dependents . . . ." § 302(c)(5) [emphasis added]. Thus, under § 302(c)(5), a pension trust fund must be operated "for the sole and exclusive benefit of the employees." *Sailer v. Retirement Fund Trust*, 599 F.2d 913, 914 (9th Cir. 1979). Nevertheless, courts generally recognize that the trustees must have broad discretion in fashioning eligibility requirements for pensions, and that judicial intervention is appropriate only where the trustees' actions in fashioning or applying those eligibility requirements do not have a reasonable basis or are arbitrary and capricious. *See Ponce v. Construction Laborers Pension Trust*, 628 F.2d 537, 541-42 (9th Cir. 1980); *Sailer v. Retirement Fund Trust*, 599 F.2d at 914. On the other hand, if an employee is "arbitrarily and capriciously" denied a pension, either because the eligibility requirements themselves are unreasonable or because reasonable eligibility requirements are applied in an unreasonable manner, a "structural de-

fect" exists in the pension plan, in violation of § 302.[5] *See Wilson v. Board of Trustees*, 564 F.2d 1299, 1300 (9th Cir. 1977); *Lee v. Nesbitt*, 453 F.2d 1309, 1311 (9th Cir. 1971); *Souza v. Trustees of Western Conference of Teamsters*, 460 F.Supp. 843 (N.D.Cal. 1978).

THE REASONABLENESS OF THE "WAITING PERIOD" REQUIREMENT

The five-month delay which is the basis of Music's complaint results directly from the pension plan's requirement that an employee be eligible for federal disability benefits in order to qualify for a union disability pension. Similar provisions have been the subject of litigation in this Circuit before.[6] The issue framed by Music here, however, is a

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[5] In the typical case, the challenged eligibility requirement operates to deny the employee a pension altogether. *See, e. g., Ponce v. Const. Laborers Pension Trust*, 628 F.2d 537 (9th Cir. 1980); *Sailer v. Retirement Fund Trust*, 599 F.2d 913 (9th Cir. 1979); *Wilson v. Board of Trustees*, 564 F.2d 1299 (9th Cir. 1977), *Giler v. Board of Trustees*, 509 F.2d 848 (9th Cir. 1975). In the instant case, the eligibility requirement challenged by Music operated only to *reduce* the amount of his pension, but does not make him ineligible for a pension. Neither Music nor the Trust Fund suggests, however, that Music's claim does not involve an alleged "structural" deficiency in the pension plan.

[6] *See Burroughs v. Bd. of Trustees*, 398 F.Supp. 168 (N.D.Cal. 1975), *aff'd*, 542 F.2d 1128 (9th Cir.), *cert. denied*, 429 U.S. 1096, 97 S.Ct. 1113, 51 L.Ed.2d 543 (1977); *Nudo v. Western Conference of Teamsters*, No. S-77-365 (E.D. Cal. Nov. 13, 1978), CCH Pension Plan Guide Transfer Binder, April, 1975–April, 1979 ¶ 22,587 (1979). *See also Blazquez v. New York City District Council*, 483 F.Supp. 727 (S.D.N.Y. 1979); *Fase v. Seafarers Welfare & Pension Plan*, 432 F.Supp. 1037, (E.D.N.Y. 1977), *aff'd*, 589 F.2d 112 (2d Cir. 1978).

relatively narrow one.[7] Music's sole contention is that his eligibility for a union disability pension should commence on the date he suffered his disabling injury, not five months later. In addition, according to Music, the benefit amount to which he is entitled should be computed under the terms of the pension plan in effect on the date he suffered his disabling injury, not under the terms of the pension plan in effect on the date he qualified for federal disability benefits five months later.

[1] The burden is initially on the plaintiff to show that the eligibility requirement under consideration is unreasonable or is "arbitrary and capricious." Once that showing is made, however, the burden shifts to the trustees of the Trust Fund to come forward with evidence establishing the reasonableness of the eligibility requirement, based on the purposes of the fund. *Roark v. Lewis*, 401 F.2d 425, 428 (D.C.Cir. 1968).

[2] The Trust Fund concedes that "[t]he only date that is important for Plan eligibility purposes is the effective date of qualification for Social Security benefits; the date that applicant suffered his heart attack has no significance under the Plan's eligibility scheme." In our view, Music has carried his initial burden of demonstrating that this is arbitrary and capricious.

One of the major purposes of the disability retirement pension, as evidenced by the terms of the pension plan, is

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[7] Music does not argue, for example, that requiring an applicant to qualify for federal disability benefits in order to qualify for a union disability pension is itself arbitrary and capricious on its face. Nor does he challenge the pension plan's right to rely on federal disability's medical determination of permanent disability.

to provide financial benefits for permanently disabled, long term employees who are not yet eligible for other pension benefits, and on whose behalf substantial contributions have been made to the Trust Fund. Each of the other eligibility requirements for a disability pension in both the 1975 and 1976 plans[4] is specifically related to that purpose. The five-month waiting period, by contrast, bears no apparent rational relationship to that purpose. It is difficult to see, at least *prima facie*, how delaying the *eligibility* of a permanently disabled applicant who satisfies every other eligibility requirement serves any of the purposes of the disability pension set forth above. In our view, where a plan participant satisfies the other eligibility requirements for a disability pension, including the age, length of service, and employer contribution requirements, that participant has a right to receive a disability pension which vests immediately when that participant becomes permanently dis-

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[4]The 1976 Plan provides in relevant part:

ARTICLE VI—DISABILITY RETIREMENT BENEFITS

Section 1—Conditions:

A Vested Participant or Age Pensioner shall be eligible for a Disability Retirement Benefit, subject to the limitations of Section 3, if (a) he has not reached his 65th birthday, (b) he is receiving Disability Insurance Benefits under the Federal Social Security Act, and

(c) he has been credited with a total of at least 3,000 Covered Hours in the calendar year in which he first satisfies all of the conditions above and in the four preceding calendar years.

The term "covered hour" means an hour of employment of an employee for which an employer contribution is paid on his account into the trust fund. See 1976 Plan, Art. I, Sec. 12.

The relevant terms of the 1975 plan are set forth in note 1, *supra*.

abled. It may be that *commencement of the benefits* to which a disabled participant has earned the right can reasonably be delayed for five months after the date of the disabling injury. Nevertheless, it is the occurrence of the disabling injury which ultimately and fundamentally establishes the participant's right to the disability benefits which are ultimately paid. *Prima facie*, it seems unreasonable to fix inception of a participant's right to benefits on any date other than the one on which the final event ultimately providing the grounds for a successful claim for benefits has occurred.

The Trust Fund offers three arguments in support of delaying an applicant's eligibility until the five-month waiting period has passed. First, it argues that a five-month waiting period is necessary to confirm that the disability under consideration is permanent. The waiting period thus performs an evidentiary role in the determination of disability—it assists in sorting permanent disabilities out from those which are only temporary.[9]

This argument is not persuasive. The Trust Fund offers no reasons for transforming a waiting period which serves an evidentiary function into an eligibility requirement. Music does not deny that it may be sound medical practice to delay the final determination of permanent disability for some reasonable period after the injury occurs. He argues, rather, that an applicant's eligibility should be retroactive to the date of the disabling injury, *the permanence of which*

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[9]This is the rationale put forward in the legislative history of that provision in the Social Security Act. *See* H.Rep. No. 1189, 84th Cong. 1st Sess. 6 (1955).

*is merely confirmed by the waiting period.*[10] The Trust Fund's argument does not address that issue.

Secondly, the Trust Fund claims that the Trust Fund would incur increased administrative costs if the Trust Fund were not permitted to rely on the five-month waiting period. We are told that the Trust Fund, for example, would be forced to conduct its own investigation into when a worker became injured, into whether subsequent events caused the disability, and into "other matters pertinent to a determination of when the applicant became 'disabled' . . . ." This argument is not convincing. The Trust Fund is *presently* presupposing that the injury occurring five months earlier, not some later one, caused the disability. As conceded by appellee in its first argument, *supra*, the Trust Fund *presently* relies on the five-month waiting period to confirm the permanence of that earlier injury. As noted above, Music concedes that the pension plan can delay determination of the employee's eligibility while the medical determination of the injury's permanence is being made, but insists that eligibility should be retroactive to the date the disabling injury occurred once that determination has been made. The Trust Fund had not explained how making eligibility retroactive to the date the disabling injury occurred would impose any additional administrative burden on them.

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[10] For purposes of this appeal, we assume that the "date of the disabling injury" is that used by the Social Security Administration in determining an applicant's "date of entitlement." The "date of entitlement," as noted earlier, is fixed after five consecutive calendar months "throughout which the individual . . . has been under a disability. . . ." 42 U.S.C. § 423(c)(2)(A).

Finally, the Trust Fund argues that the plan's reliance on the five-month waiting period "recognizes that most individuals receive temporary disability payments from their health and welfare plans or other insurance during this five-month interim." While the thrust of this argument is not completely clear, the Trust Fund is perhaps contending that delaying payment of disability pension benefits is reasonable because it would enhance the actuarial soundness of the pension plan.[11] The Trust Fund might further suggest that such a policy is not at odds with the purpose of the pension plan, since affected workers receive income from other sources during that period.

We do not find this argument persuasive. Music is not arguing that he is entitled to disability benefits for the five-month period immediately following his disabling injury; indeed, Music's counsel made quite clear at oral argument that Music is not seeking any benefits for that five-month period.[12] Music is arguing only that his *eligibility* for benefits should be fixed as of the date of his disabling injury *for purposes of determining whether* he is covered under the 1975 plan or under the 1976 plan. The Trust Fund's argument does not address that issue.

The Trust Fund has demonstrated no reasonable justification for delaying Music's eligibility for a disability

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[11] *See generally, Tomlin* v. *Board of Trustees*, 586 F.2d 148 (9th Cir. 1978); *Wilson* v. *Board of Trustees*, 564 F.2d 1269 (9th Cir. 1977).

[12] Thus, the issue of whether the Trust Fund might reasonably delay commencement of benefits for 5 months, or might offset the union disability benefits for those five months by the amount of other benefits received from other sources, is not before us.

pension for five months after the date of his disabling injury. Music should therefore be deemed eligible for his pension as of November 5, 1975 and his benefits computed under the rate fixed by the 1975 plan.[13]

The judgment in favor of the Western Conference of Teamsters Pension Trust Fund is reversed. The order denying Music's cross-motion for a summary judgment is vacated. This matter is remanded to the district court for further proceedings consistent with the views expressed in this opinion.

REVERSED.

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[13]Because we find that the eligibility requirement here is arbitrary & capricious under § 302(c)(5), we need not address Music's contentions involving the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq. (1974).

We are mindful of the fact that under the 1976 plan, disability benefits payable to plan participants who are 55 or over on the "effective date of their disability retirement benefits" are payable at a somewhat higher rate than similar benefits for participants who are under age 55 on the "effective date of their disability retirement benefits." 1976 Plan, Art. VI, § 2. The question may arise as to whether the "effective date of disability retirement benefits" for purposes of this provision should be considered the *actual* date of the disabling injury, as in this case, or the effective date of the *actual payments*, which under the 1976 plan is some five months later. That particular issue was not presented by this case, and we do not address it here.

## Appendix B

United States Court of Appeals
For the Ninth Circuit

No. 79-4251
D.C. No. 78-1648 RHS

Frank Music,
Plaintiff-Appellant,

v.

Western Conference of Teamsters Pension Trust Fund,
Defendant-Appellee.

[Filed April 16, 1982]

ORDER

Appeal from the United States District Court
for the Northern District of California
Robert H. Schnacke, District Judge, Presiding
Argued and submitted January 15, 1981

Before: SKOPIL, ALARCON, and BOOCHEVER,
Circuit Judges.

The Opinion filed on October 26, 1981, in the above-entitled case has been amended as follows:

Add the following paragraph just prior to "REVERSED" IN No. 79-4251, Slip op. at 5432 (9th Cir. Oct. 26, 1981):

> "The judgment in favor of the Western Conference of Teamsters Pension Trust Fund is reversed. The order denying Musick's cross-motion for summary judgment is vacated. This matter is remanded to the district court for further proceedings consistent with the views expressed in this opinion."

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

## Appendix C

Section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended (73 Stat. 537, 87 Stat. 314), 29 U.S.C. § 186, provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

"(1) to any representative of any of his employees who are employed in an industry affecting commerce;

* * * * *

"(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

"(c) The provisions of this section shall not be applicable * * * (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from

principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon * * * and [the agreement] shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; * * *

"(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

"(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-115 of this title."